Case 5:99-cv-20535-JF Document 60 Filed 02/14/07 Page 1 of 4 **Original filed 2/14/07** 1 2 3 4 5 6 7 8 NOT FOR CITATION 9 IN THE UNITED STATES DISTRICT COURT 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA 11 PHILLIP MORRIS, No. C 99-20535 JF (PR) 12 Petitioner. 13 ORDER DENYING CERTIFICATE OF 14 APPEALABILITY; DENYING VS. MOTION TO PROCEED IN 15 FORMA PAUPERIS ON APPEAL A.C. NEWLAND, Warden, 16 17 Respondent. (Docket Nos. 57, 59) 18 19 Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of 20 habeas corpus pursuant to 28 U.S.C. § 2254. The Court granted Respondent's motion to 21 dismiss the petition as untimely and entered judgment on April 10, 2003. On June 5, 22 2003, the Court granted Petitioner's request for a certificate of appealability on the 23 following issues: (1) whether AEDPA's limitation period should be statutorily tolled; and 24 (2) whether AEDPA's limitation period should be equitably tolled in the instant petition. 25 On May 19, 2004, the Ninth Circuit Court of Appeals affirmed this Court's order 26 dismissing the petition as untimely. Thereafter, Petitioner filed a motion for relief from 27 judgment, a first amended motion to vacate judgment, and two letters requesting a status 28 Order Denying Certificate of Appealability; Denying Motion to Proceed in Forma Pauperis on Appeal P:\pro-se\sj.jf\hc.99\Morris535dencoa

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of the instant case. The Court denied Petitioner's motion for relief from judgment and motion to vacate judgment. The Court concluded that Petitioner failed to establish any of the grounds for relief pursuant to Rule 60(b). The Court noted that the Court of Appeals affirmed this Court's dismissal of the instant petition.

In September 2006, Petitioner filed a notice of appeal based on the Court's order denying Petitioner's motion for relief from judgment and motion to vacate judgment. Petitioner also filed a request for a certificate of appealability and a motion to proceed in forma pauperis on appeal. The Court will DENY the request for a certificate of appealability (docket no. 57) and DENY Petitioner's motion to proceed in forma pauperis on appeal (docket no. 59).

DISCUSSION

Petitioner filed a notice of appeal and a request for a certificate of appealability based upon this Court's denial of his motion for relief from judgment and motion to vacate judgment.

Upon the filing of a notice of appeal and a request for a certificate of appealability (COA), the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. §2253(c)(3)).

The Court dismissed the instant petition as untimely pursuant to 28 U.S.C. § 2244(d)(1). The Court denied Petitioner's motion for relief from judgment and motion to vacate judgment because Petitioner failed to establish any grounds for relief pursuant to Rule 60(b). The Court of Appeals affirmed this Court's dismissal of the instant petition and Petitioner's case is closed.

Petitioner has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000).

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1	Accordingly, Petitioner's request for a certificate of appealability (docket no. 57) is
2	DENIED. Based upon the Court's denial of appealability, Petitioner's motion to proceed
3	in forma pauperis on appeal (docket no. 59) is DENIED. The Clerk shall transmit the
4	file, including a copy of this order, to the Court of Appeals. See Fed. R. App. P. 22(b).
5	IT IS SO ORDERED.
6	DATED: _2/14/07
7	United States District Judge
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27	¹ Petitioner may then ask the Court of Appeals to issue the certificate, see Fed. R.
28	App. P. 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see Fed. R. App. P. 22(b)(2).
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Order Denying Certificate of Appealability; Denying Motion to Proceed in Forma Pauperis on Appeal P:\pro-se\sj.jf\hc.99\Morris535dencoa 3

This is to certify that a copy of this ruling was mailed to the following: Phillip Morris, Jr. H-59819 CA Mens Colony -East P.O. Box 8101 San Luis Obispo, CA 93409 Peggy S. Ruffra CA State Attorney General's Office 455 Golden Gate Avenue Suite 11000 San Francisco, CA 94102-7004 Order Denying Certificate of Appealability; Denying Motion to Proceed in Forma Pauperis on Appeal P:\pro-se\sj.jf\hc.99\Morris535dencoa